

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NICOLE EBRON,

Plaintiff,

V.

THE UNITED STATES OF AMERICA,

Defendant.

ECF CASE

08 Civ. 144 (AJP)

## DECLARATION OF TOMOKO ONOZAWA

TOMOKO ONOZAWA, pursuant to 28 U.S.C. § 1746, declares the following under penalty of perjury:

1. I am an Assistant United States Attorney in the office of Michael J. Garcia, United States Attorney for the Southern District of New York, attorney for defendant United States (“the Government”) in the above-captioned case.

2. I submit this declaration in support of the Government's Motion *in Limine* to Exclude Certain Evidence at Trial.

3. Annexed hereto as Exhibit A is a true and correct copy, dated July 8, 2008, of plaintiff's Fed. R. Civ. P. 26(a)(2) disclosure of her intent to call Dr. Kenneth Ackerman, M.D., as a testifying expert at trial.

4. Annexed hereto as Exhibit B is a true and correct copy of the expert report of Kenneth Ackerman, M.D., dated July 8, 2008, that was produced as part of plaintiff's Rule 26 expert disclosure in the above-captioned case.

5. Annexed hereto as Exhibit C is a true and correct copy of excerpts from the

transcript of Kenneth Ackerman's deposition in this matter, taken on August 13, 2008.

6. Annexed hereto as Exhibit D is a true and correct copy of excerpts from the transcript of plaintiff Nicole Ebron's deposition in this matter, taken on July 31, 2008.

7. Annexed hereto as Exhibit E is a true and correct copy of Plaintiff's Supplemental Response to the Government's Interrogatories in this action, dated May 27, 2008.

I declare that the foregoing is true and correct pursuant to the penalties of perjury at 28 U.S.C. § 1746.

Dated: New York, New York  
September 9, 2008

By: /s/ Tomoko Onozawa  
TOMOKO ONOZAWA

# **EXHIBIT A**

POPKIN & POPKIN, LLP.  
By : ERIC F. POPKIN (9578)  
209 WEST 97<sup>TH</sup> STREET  
SUITE 7(C)  
NEW YORK, NY., 10025  
Telephone : 212 662-2969  
Facsimile : 212 531-1116  
E-mail : Lizjackpoplaw@aol.com

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
-----X  
NICOLE EBRON,

Plaintiff

ECF Case

-against-

08 Civ. 0144 (RMB) (AJP)

UNITED STATES OF AMERICA,

EXCHANGE OF EXPERT  
PURSUANT TO FEDERAL  
RULE 26 (a)(2)

Defendant,

-----X

PLEASE TAKE NOTICE that, Pursuant to Rule 26(a)(2) of the Federal Rules of Civil Procedure, plaintiff, Nicole Ebron ("plaintiff"), by her attorneys, Popkin & Popkin, LLP., makes the following disclosure and does hereby give notice of the plaintiff's intention to call Dr. Kenneth R. Ackerman, M.D., as an expert witness at the time of trial on the issues of the defendants' negligence and medical malpractice, as well as the plaintiff's injury and damages. Dr. Kenneth R. Ackerman, M.D., maintains an office for the practice of medicine at 277 Northern Boulevard, Great Neck, N.Y., 11021.

1. It is anticipated that at the time of trial that Dr. Ackerman, M.D., will testify as to the defendants' departure from good and accepted medical practice and procedure in the care and treatment that the defendant provided Ms. Nicole Ebron. It is

also anticipated that Dr. Ackerman, M.D. will offer the opinion that the defendants failed to properly prepare Ms. Ebron's tetanus injection site for the tetanus injection that was given to Ms. Nicole Ebron and that the failure to properly prepare the tetanus injection site prior to the tetanus injection was a deviation from good and accepted medical practice and procedure which led to, and was the cause of, the infection and the scarring sustained by Ms. Ebron. It is further anticipated that Dr. Ackerman, M.D.'s Testimony will be that the scarring sustained by Ms. Ebron was the result of the defendants negligence and medical mal practice and that the scarring is permanent.

2. The basis of Dr. Ackerman, M.D.'s testimony will be his education and training in the field of medicine. his preparation of tetanus and other injection sites, the doctors administration of tetanus and other injections, as well as the doctors review of the medical records exchanged by the plaintiff and the defendants in compliance with the Rule 26 exchange, including but not limited to the defendants' care and treatment records for Ms. Nicole Ebron; as well as discussion with the plaintiff and all of the testimony and exhibits admitted into evidence at the time of trial.

3. It is anticipated that Dr. Ackerman, M.D., at the time of his testimony, will use and rely on all of the medical records marked as exhibits and admitted into evidence, as well as an anatomically correct diagram of the arm.

4. Dr. Ackerman, M.D., received his medical degree from Stony Brook University. He is licensed to practice medicine by the State of New York, having obtained his license in 1989. Dr. Ackerman, M.D., is Board Certified in internal medicine having passed his examinations in 1991 and 2000.

5. In the past four years Dr. Ackerman, M.D., has appeared as an expert and

given expert testimony in the following :

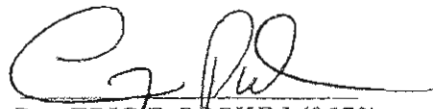
a.) Usdan v. Horowitz.

6. Dr. Ackerman, M.D., has been compensated for his review of the relevant information and his report of his findings in the amount of Five Hundred (\$500.00) Dollars. Dr. Ackerman, M.D., Will be compensated in the amount of Two Thousand and Five Hundred (\$2,500.00) Dollars for his trail appearance.

PLEASE TAKE FURTHER NOTICE that, the plaintiff reserves the right to seasonably amend and/or make corrections to this response in compliance with Rule 26 (e)(1) of the Federal Rules of Civil Procedure as needed.

Dated : New York, New York  
July 8, 2008

POPKIN & POPKIN, LLP.  
Attorneys for Plaintiff



By : ERIC F. POPKIN (9578)  
209 WEST 97<sup>TH</sup> STREET  
SUITE 7(C)

NEW YORK, NY., 10025

Telephone : 212 662-2969

Facsimile : 212 531-1116

E-mail : [Lizjackpoplaw@aol.com](mailto:Lizjackpoplaw@aol.com)

CERTIFICATION OF SERVICE

I, Eric F. Popkin, a partner at the offices of Popkin & Popkin, LLP., attorneys for the plaintiff, hereby certify that on July 14, 2008, I caused a copy of the foregoing EXCHANGE OF EXPERT PURSUANT TO FEDERAL RULE 26 (a) (2) to be personally served upon the following :

Tomoko Onozawa  
Assistant United States Attorney  
Offices of Michael J. Garcia  
United States Attorney for the  
Southern District of New York  
86 Chambers Street, Third Floor  
New York, N.Y., 10007

  
Eric F. Popkin

## **EXHIBIT B**



Kenneth R. Ackerman, M.D.  
277 Northern Boulevard  
Great Neck, N.Y. 11021  
516-829-7730

Date: July 8, 2008

Re: Nicole Ebron

I have spoken to Nicole Ebron and reviewed her care and treatment records. Based on my review of all of the information made available to me, I have formed the following opinion:

An injection was performed without appropriate skin preparation. Preparing the skin properly is a standard technique that should be followed at all times. The patient subsequently developed a significant skin infection at the injection site this led to the need for the incision and drainage of the infected injection site and the patients prolonged use of antibiotics.

Within a reasonable degree of medical certainty, the infection was caused by the improper injection technique.

The failure to prepare the injection site by proper cleansing is a departure from the standard of care and is a causal result of the injury in this case.

The defendants' departed from good and accepted medical practice and procedure in the care provided to Ms. Nicole Ebron. The defendants' failure to properly prepare the tetanus injection site was a deviation from good and accepted medical practice and procedure. Further, it was this deviation from good and accepted practice, care and procedure which led to and was the cause of the infection and the scarring sustained by Ms Ebron. Additionally the scarring sustained by Ms. Ebron is permanent.

The basis my opinions are my education and training in the field of medicine, preparation of tetanus and other injection sites as well as the administration of tetanus and other injections, and a review of the my review of all of the information which was made available to me.

I will use and rely on all of the medical records marked as an exhibit and admitted into evidence, as well as an anatomically correct diagram of the arm.

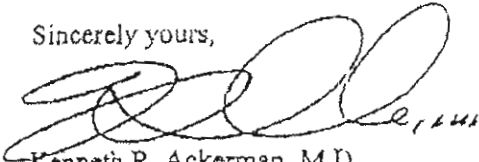
I received my medical degree from Stony Brook University in New York. I am licensed to practice medicine by the State of New York, having obtained my license in 1939. I am Board Certified in Internal Medicine having passed my exams in 1991 and 2000.

In the past four years, I have appeared as an expert and given expert testimony in the following matter in New York State:

a. Usdan v. Horowitz

To date I have been compensated in the amount of Five Hundred (\$ 500) Dollars. For appearing at trial, I will receive additional compensation in the amount of Two thousand and Five Hundred ( \$2,500.00) Dollars.

Sincerely yours,



Kenneth R. Ackerman, M.D.

## **EXHIBIT C**

Kenneth R. Ackerman

August 13, 2008

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
NICOLE EBRON,

Plaintiff,

Civil Action

-against-

No:  
08Civ.0144  
(RMB) (AUP)

UNITED STATES OF AMERICA,

Defendant.  
-----

DEPOSITION OF KENNETH R. ACKERMAN,  
M.D., an expert witness herein, taken by  
Defendant, pursuant to notice, held at the  
offices of Kenneth R. Ackerman, M.D., 277  
Northern Boulevard, Suite 318, Great Neck, New  
York 11021, on Wednesday, August 13, 2008, at  
2:42 p.m., before HELGA CHRISTIANE LAVAN, a  
Registered Professional Reporter and notary  
public, within and for the State of New York.

1 K. Ackerman

2 A. No.

3 Q. Why is that?

4 A. Again, it's the custom and practice  
5 to do it each and every time.

6 Q. Now, when you arrived at your expert  
7 opinion you made certain factual assumptions,  
8 right?

9 A. Yes.

10 Q. Would your opinion change if the  
11 nurse had used an alcohol swipe to prepare the  
12 skin for administering the vaccine?

13 A. Yes, it would.

14 Q. So if she used an alcohol swipe to  
15 prepare the skin, that wouldn't be a deviation  
16 from good and standard medical practice; is  
17 that right?

18 A. Right.

19 Q. Aside from your opinion that the  
20 infection was caused by the failure to  
21 properly prep the site, are you offering any  
22 other opinions in this case?

23 A. No.

24 MR. POPKIN: Objection. What do you  
25 mean?

Kenneth R. Ackerman

August 13, 2008

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1 K. Ackerman

2 MS. ONOZAWA: Well, are there any  
3 other opinions within your scope of an expert  
4 that you're offering in this case?

5 MR. POPKIN: He's offering opinions  
6 whether or not there was a malpractice.

7 MS. ONOZAWA: He just answered no.

8 Q. Do you understand the question?

9 MR. POPKIN: I don't understand the  
10 question so I'll object to the question.

11 A. I don't intend to offer any opinions  
12 as to any other departures.

13 Q. So the only departure that you have  
14 offered an opinion on is the failure to prep  
15 the site; is that correct?

16 A. That's correct.

17 Q. So you're not offering an expert  
18 opinion on whether the defendant disclosed to  
19 Ms. Ebron the risks and benefits of receiving  
20 the shot?

21 A. No.

22 Q. You're not offering an expert opinion  
23 on whether the defendants failed to properly  
24 treat the infection after it happened?

25 A. That's correct.

Kenneth R. Ackerman

August 13, 2008

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1 K. Ackerman

2 Q. Now, you said that you derived  
3 certain facts about this case based on your  
4 conversations with plaintiff; is that right?

5 A. Yes.

6 Q. When you spoke to her did you have  
7 any reason to believe that she might be  
8 misrepresenting the facts based on the fact  
9 that she was a plaintiff?

10 A. No.

11 Q. So you accepted everything that she  
12 said as truthful and accurate?

13 A. Yes.

14 Q. Just to confirm, your expert report  
15 doesn't touch on the issue as to whether Ms.  
16 Ebron properly received notice of the risks  
17 and benefits of the vaccine; is that right?

18 MR. POPKIN: Objection. You can  
19 answer it.

20 A. That's correct.

21 Q. Am I also right that your expert  
22 report doesn't provide an opinion on the issue  
23 as to how the appropriateness of the treatment  
24 Ms. Ebron received after she got the  
25 infection; is that correct?

Kenneth R. Ackerman

August 13, 2008

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1 K. Ackerman

2 A. That's correct.

3 Q. You said earlier that you haven't  
4 read any other deposition transcripts in this  
5 case; is that right?

6 A. That's correct.

7 Q. Would it help your expert opinion to  
8 read any of those transcripts?

9 A. I don't know.

10 Q. Do you think it would have been  
11 useful to read any deposition transcripts from  
12 the doctor and the nurse who administered the  
13 shot?

14 A. It may or may not have.

15 Q. When you formed your expert opinion  
16 did you consult any other materials, for  
17 example, treatises or articles?

18 A. No, I did not.

19 Q. Just going back to the notes that you  
20 said you prepared, was that at the request of  
21 counsel?

22 A. Yes.

23 Q. Were those notes prepared before or  
24 after your expert report?

25 A. They're all one in the same.



Kenneth R. Ackerman

August 13, 2008

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1 K. Ackerman

2 Q. Those notes were used in the  
3 preparation of your expert report?

4 A. Yes.

5 MR. POPKIN: His notes, are they  
6 your expert report, is that what you're  
7 saying?

8 THE WITNESS: Yes.

9 MR. POPKIN: So they are your  
10 report, not just you prepared them.

11 THE WITNESS: Yes.

12 Q. You referred to notes that you  
13 referred to in preparation of this deposition;  
14 correct?

15 A. Yes.

16 Q. But that wasn't your expert report?

17 A. Yes, it was.

18 Q. It was your expert report?

19 A. Yes.

20 MS. ONOZAWA: I have no further  
21 questions.

22 MR. POPKIN: Doctor, I have just a  
23 couple of questions for you.

24 EXAMINATION BY

25 MR. POPKIN:

Kenneth R. Ackerman

August 13, 2008

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1 K. Ackerman

2 Q. In giving a tetanus shot is it proper  
3 practice and procedure in your opinion to a  
4 degree of medical certainty to inform a  
5 patient of the risk of infection from  
6 giving -- just from giving a shot?

7 A. In general no.

8 Q. If there is no preparation of the  
9 injection site does your opinion change on  
10 whether or not the patient should be notified  
11 of the risk of infection?

12 A. Yes it does.

13 Q. In what way does it change?

14 A. Well, you would want to tell them  
15 that the risk is significantly increased by  
16 not preparing the injection site.

17 Q. From a medical practitioner's point  
18 of view, why has that become important in  
19 informing the patient of that information?

20 A. Because they always have the option  
21 not to take the shot.

22 Q. Does the risk of infection from a  
23 tetanus shot increase with the lack of proper  
24 preparation?

25 A. It would increase in any type of

Kenneth R. Ackerman

August 13, 2008

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1 K. Ackerman

2 shot.

3 Q. That failure to properly prepare, is  
4 that something which affects the need to  
5 inform a patient of the risk of the procedure?

6 A. Absolutely.

7 Q. Is it because of the increased risk  
8 of infection that that need to inform becomes  
9 important?

10 A. Yes.

11 Q. Thank you, Doctor.

12 In this particular case I want you to  
13 assume, as you have in this matter, that  
14 proper preparation wasn't given. I want you  
15 to further assume that after the proper  
16 preparation was not done by Ms. Gilmore, that  
17 she did not inform the patient of the risks,  
18 increased risks of infection.

19 Now, for the purposes of this  
20 question I want you to assume that all that's  
21 been testified to at her deposition is true --  
22 when I say her deposition, Ms. Gilmore -- as  
23 far as not giving any notification of the  
24 risks. Do you have an opinion to reasonable  
25 degree of medical certainty whether that

Kenneth R. Ackerman

August 13, 2008

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1 K. Ackerman

2 failure to inform the patient and get the  
3 patient's consent under that fact pattern is a  
4 deviation of good accepted medical practice  
5 and procedure?

6 A. Yes.

7 Q. What was that opinion?

8 A. That it is a departure of good and  
9 acceptable medical practice to perform a  
10 procedure such as that without obtaining the  
11 appropriate consent in that situation.

12 MR. POPKIN: Thank you, Doctor.

13 MS. ONOZAWA: I have one follow-up  
14 question.

15 CONTINUED EXAMINATION

16 BY MS. ONOZAWA:

17 Q. When did you receive the medical  
18 records that you reviewed in preparation for  
19 the expert report?

20 A. Like I said, probably the end of June  
21 or so.

22 Q. Did you receive any medical records  
23 after that?

24 A. Not that I'm aware of.

25 (Continued on next page.)

## **EXHIBIT D**

Nicole Ebron

July 31, 2008

Page 1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
NICOLE EBRON,

Plaintiff,

-v-

Civil Action No.  
08 CV 00144

UNITED STATES OF AMERICA,

Defendant.  
-----

DEPOSITION OF NICOLE EBRON, the  
Plaintiff herein, taken by Defendant, pursuant  
to Order, at the offices of the U.S. Attorney,  
86 Chambers Street, New York, New York, on  
Thursday, July 31, 2008, at 10:15 a.m., before  
Margaret Eustace, a Shorthand Reporter and  
notary public, within and for the State of New  
York.

Nicole Ebron

July 31, 2008

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1 N. Ebron

2 I remember I called a cab, I went to Jacobi.

3 Q. What time did you go?

4 A. I don't even remember exactly the  
5 time but I do remember it was before 7:00 or  
6 8:00 in the morning, because I got up very  
7 early, maybe 6:00, and my neighbor -- no, my  
8 sister had my daughter.

9 I went to Jacobi. I was there for  
10 hours. The nurse actually looked at my arm,  
11 when she did my vitals. And she said, "Oh, my  
12 God, what happened to your arm?"

13 I still at the time didn't know that  
14 it was because of the injection. And she said  
15 to me, when I explained to her what happened,  
16 and I said, "I don't know what happened to my  
17 arm. I just went for a physical and I had got  
18 a tetanus shot."

19 And she said that that looks like --  
20 I can't remember the word, salmonella or  
21 something like that. A word familiar with  
22 that word. And she said, "Were you injected  
23 without an alcohol swipe?"

24 Q. She said that to you?

25 A. Yes.

Nicole Ebron

July 31, 2008

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1 N. Ebron

2 So I said yes. And she said --

3 Q. It was then that you remembered?

4 A. Yes.

5 Q. It hadn't occurred to you before  
6 then?

7 A. Right. I never thought that it would  
8 be from that, you know. I had no reason to  
9 think that it would come from that. And when  
10 she said that, I started crying so bad.

11 And she said, "It's okay. You came  
12 just in time."

13 Q. Do you remember the name of this  
14 nurse?

15 A. No.

16 A. So then I remember I waited for a  
17 while. The doctor called me in.

18 Q. How long did you wait?

19 A. Maybe about an hour.

20 The doctor called me in, and the  
21 doctor said, "Wow, that's ugly." And then he  
22 asked me what happened. And I explained to  
23 him what happened.

24 Q. When you said you explained to him  
25 what happened, what exactly did you say?



Nicole Ebron

July 31, 2008

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1 N. Ebron

2 A. I explained to him that I went to the  
3 doctor to get a physical and I had got a  
4 tetanus shot. And I still didn't think that  
5 it was because I didn't get swiped.

6 He also asked me was the site cleaned  
7 before you got the injection. So I said,  
8 "No." I still said, "Why?" Like I didn't  
9 know it made a difference.

10 And he said, "That's why your arm is  
11 like that." And he said, "You are always  
12 supposed to be prepped first before you get  
13 injected with any form of a needle."

14 So I am really upset now. I am  
15 hysterical and I am saying, "Am I going to  
16 die? Is my arm going to get cut off? Am I  
17 going to catch a disease?" I am thinking all  
18 of these things in my mind.

19 So he said, "This is going to be  
20 really bad. I am going to have to lance your  
21 arm." I didn't know what that meant at the  
22 time, so he told me he had to cut my arm open  
23 and I was really afraid. I was by myself. I  
24 was just so upset --

25 Q. I'm sorry.

Nicole Ebron

July 31, 2008

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1 N. Ebron

2 Did you say your sister went with  
3 you?

4 A. No, my sister had my daughter.

5 Q. You went by yourself in a cab?

6 A. Yes.

7 Q. Go ahead, I'm sorry.

8 A. So then I remember that he told me he  
9 was going to numb the area and he was going to  
10 lance my arm.

11 Once he did that, once he started to  
12 open the knot up, he said, "Oh, wow. I have  
13 never seen this much," he called it another  
14 word for pus. There is another word for it.  
15 And he said, "You came just in time." He  
16 said, "If you had waited one more day, this  
17 pus would have poisoned your system." He  
18 said, "This is really bad."

19 So I said, "Oh, my God."

20 He said, "Who did this? What doctor  
21 did you go to?" So I gave him the bottle  
22 because I was so upset, I couldn't event think  
23 of the doctor --

24 Q. Which bottle?

25 A. The Biaxin. It had the address on

Nicole Ebron

July 31, 2008

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1 N. Ebron

2 it, because I couldn't even think at the time.  
3 So I showed him. I said, "This is the  
4 address."

5 Q. Then he said, "Is this your  
6 medication?"

7 I said, "Yes."

8 He said, "Who gave this to you?"

9 I said, "My doctor prescribed it to  
10 me."

11 And he said, "For what?"

12 So I said, "For my arm. He said it's  
13 infected and it will go away. It will bust on  
14 its own."

15 He said, "This is not the antibiotic  
16 that he should have given you. Throw this  
17 away."

18 And I was afraid. I said, "Okay,"  
19 and I didn't throw it away. I just put it in  
20 my pocketbook. And he said, "He should have  
21 never given you that medication. That is not  
22 a medication for what you have."

23 And then he did everything that he  
24 had to do, which it took him quite a while.  
25 Maybe 20 minutes to drain all the pus out of

Nicole Ebron

July 31, 2008

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1 N. Ebron

2 Q. Any other symptoms at the site of the  
3 injection?

4 A. No.

5 Q. Just the shooting pain?

6 A. Yes.

7 Q. Do you know why you are suffering  
8 from these shooting pains?

9 A. No -- I know why, because of the  
10 injury that happened to my arm.

11 Q. Did a doctor tell you that?

12 A. No.

13 Q. Anybody tell you that?

14 A. No.

15 Q. Is there anything that you did on a  
16 regular basis before January 2004 that you no  
17 longer can do now?

18 A. No.

19 Q. Has any doctor put restrictions on  
20 your activities because of the injury you  
21 suffered in January 2004?

22 A. No.

23 Q. Do you expect to receive any further  
24 medical treatment for the injuries you are  
25 claiming in this lawsuit?

Nicole Ebron

July 31, 2008

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1 N. Ebron

2 A. No.

3 Q. Has any doctor told you that there  
4 might be necessary surgeries in the future?

5 A. No.

6 Q. Has anybody prescribed physical  
7 therapy for any injuries you suffered as a  
8 result of what happened in January 2004?

9 A. No.

10 Q. So other than what you have testified  
11 to so far this morning, have you had any other  
12 conversations with any doctor regarding the  
13 tetanus vaccination you had in January 2004?

14 A. From Parkchester Family Practice?

15 Q. Anybody other than the doctors you  
16 have testified about so far in Parkchester and  
17 Jacobi?

18 A. No.

19 Q. Have you had any conversations with  
20 any nurse?

21 A. No.

22 Q. Any other medical practitioner?

23 A. No.

24 Q. You identified earlier four  
25 individuals who have knowledge about what

Nicole Ebron

July 31, 2008

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1 N. Ebron

2 from your last visit at Parkchester until the  
3 day you signed your retainer agreement?

4 A. No.

5 Q. But you spoke to him in February of  
6 '04?

7 A. Yes.

8 Q. Did you speak with any other lawyer?

9 A. No.

10 Q. Did anyone suggest to you that you  
11 should bring a lawsuit?

12 A. No.

13 Q. This was of your own volition?

14 A. Yes.

15 Q. Now, how have you paid for medical  
16 care relating to the site of the injection?

17 A. I have insurance.

18 Q. What kind of insurance is that?

19 A. Medicaid.

20 Q. Do you have any other kind of  
21 insurance?

22 A. No.

23 Q. Now, did you receive bills for any  
24 medical treatment relating to that injection?

25 A. No.

Nicole Ebron

July 31, 2008

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1 N. Ebron

2 Q. You never received any bills?

3 A. No.

4 Q. Do you have any documents showing how  
5 much your medical treatment cost?

6 A. No.

7 Q. Did you pay any medical bills?

8 A. No.

9 Q. So all of it, 100 percent of that was  
10 reimbursed by Medicaid?

11 A. Yes, I believe so.

12 Q. And none of it was covered by Social  
13 Security?

14 A. No, I don't receive any of that.

15 Q. State disability?

16 A. No.

17 Q. Workers' Comp?

18 A. No.

19 Q. So did you pay -- with respect to  
20 your medical treatment, did you pay any -- you  
21 haven't paid any bills; is that correct?

22 A. That's correct.

23 Q. Has anyone else paid for your bills?

24 A. No.

25 Q. So all of this was covered by



Nicole Ebron

July 31, 2008

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1 N. Ebron

2 Medicaid?

3 A. Yes.

4 Q. But you don't have any records by  
5 Medicaid?

6 A. No.

7 Q. If you could take a look at  
8 Government's Exhibit 4?

9 A. Yes.

10 Q. In paragraph 9A, you estimated \$4,200  
11 for past medical expenses?

12 MR. POPKIN: Right here.

13 A. Yes.

14 Q. That is correct?

15 A. Yes.

16 Q. Are these for bills from Parkchester,  
17 the Jacobi emergency room and Jacobi urgent  
18 care wound specialist?

19 A. Yes.

20 Q. And this amount is your understanding  
21 of the bills you received?

22 A. Yes.

23 Q. So you did receive bills?

24 A. Not directly to me.

25 Q. Where were they sent to?



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2 MR. POPKIN: She is asking if you  
3 know where those bills were sent?

4 THE WITNESS: No.

5 Q. Have you ever seen these bills?

6 A. No.

7 Q. So how did you come up with the  
8 estimate of \$4,200 of past medical expenses?

9 MR. POPKIN: It is contained within  
10 what has been marked as Government's 4  
11 already. Her recollection is set out in here.  
12 I don't understand your question.

13 Q. Do you understand my question?

14 A. Not really.

15 Q. You just said that you never saw the  
16 medical bills?

17 A. No.

18 Q. So how did you recall that you had  
19 \$4,200 in past medical expenses?

20 A. I don't know how to answer that.

21 Q. Did anyone help you with this  
22 estimate?

23 A. No.

24 Q. Have you undertaken any efforts to  
25 obtain copies of those bills?

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2 A. No.

3 Q. Are you in a position to request  
4 copies of those bills?

5 A. No.

6 Q. So you have no personal knowledge of  
7 how this \$4,200 in past medical expenses was  
8 calculated?

9 A. No.

10 Q. In your discovery responses that is  
11 same exhibit, Government's 4, paragraph 9K, if  
12 you can look at that.

13 MR. POPKIN: Hold on a second.

14 Okay.

15 Q. You estimated \$1,450 for past  
16 out-of-pocket expenses.

17 MR. POPKIN: Do you see that?

18 THE WITNESS: Yes.

19 Q. And it's for medication, bandaging  
20 scars, vitamins ointments, things which were  
21 and continue to be needed for use in the care  
22 of your injury.

23 MR. POPKIN: As well as the cost of  
24 transportation to and from doctors, hospitals  
25 and clinics and for the care of injury.

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2 And it says plaintiff is not in  
3 possession of documents, business receipts on  
4 which this amount is based.

5 Q. How did you come up with an estimate  
6 of \$1,450?

7 MR. POPKIN: You mean other than  
8 what it says in 9K?

9 MS. ONOZAWA: Correct.

10 MR. POPKIN: If there is any other  
11 basis, let her know.

12 A. No.

13 Q. Did someone assist you with this  
14 estimate?

15 A. No.

16 Q. Is there any way of verifying the  
17 accuracy of this estimate?

18 A. No.

19 Q. Is there any way of verifying the  
20 accuracy of the \$4,200 for past medical  
21 expenses listed in paragraph 9A?

22 A. No.

23 Q. I am going to keep asking questions  
24 about that.

25 Paragraph 9L, you said you are

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2 understanding. Where did it come from.

3 Q. Okay, let me break it down.

4 Did someone tell you that your future  
5 out-of-pocket costs would be \$4,400?

6 A. No.

7 Q. Did you see any documents showing  
8 that your future out-of-pocket expenses would  
9 be \$4,400?

10 A. No.

11 Q. Did you make any calculations when  
12 you came up with damages in the amount of  
13 \$4,00 for future out-of-pocket expenses.

14 MR. POPKIN: That is a calculation.

15 What do you mean by that?

16 Q. Did you personally calculate that  
17 amount?

18 A. You mean did I add that amount up?

19 Q. Yes.

20 A. No.

21 Q. When was this \$4,400 for future  
22 out-of-pocket expenses calculated?

23 A. I am not sure exactly.

24 Q. What are these \$4,400 future  
25 out-of-pocket costs, expenses supposed to pay

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2 for?

3 MR. POPKIN: You can read it to her  
4 again.

5 A. For the scarring of the injury  
6 site --

7 Q. Right, but does that include -- you  
8 have a very specific list in the previous  
9 paragraph: Medication, bandage, gauze,  
10 vitamins, ointments, creams, et cetera.

11 Is that what the \$4,400 for future  
12 care is --

13 A. Yes.

14 Q. It is?

15 A. Yes.

16 Q. So other than medications -- future  
17 medications, bandages, gauze, vitamins,  
18 ointments, creams which will be needed in the  
19 future to care for this injury, is there  
20 anything else that might be included in these  
21 future out-of-pocket expenses other than what  
22 you have in paragraph 9L?

23 A. No.

24 Q. Paragraph 9B, the same exhibit, says  
25 you are seeking damages in the amount of

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2 \$11,800 for future medical expenses; is that  
3 correct?

4 A. Yes.

5 Q. On the second page, it says here the  
6 basis of the amount set forth in Response 9B  
7 is the reasonable cost for revision or  
8 revisions, surgeries for correction of  
9 scarring; is that correct?

10 MR. POPKIN: As well as the  
11 reasonable cost --

12 MS. ONOZAWA: Can you just let me  
13 finish.

14 MR. POPKIN: Sure.

15 Q. Is that what it says?

16 A. Yes.

17 Q. I will ask about everything in this  
18 paragraph, but let me just focus on revision  
19 surgery.

20 What is the reasonable cost of  
21 revision surgery for correction of the  
22 scarring?

23 A. I am confused. I don't know.

24 Q. Did you consult with any surgeon with  
25 respect to correcting the scar?

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2 A. I want to get it corrected, yes.

3 Q. Have you consulted with anybody about  
4 getting that corrected?

5 A. No.

6 Q. Do you know how much it will cost for  
7 you to get it corrected?

8 A. No, not exactly.

9 Q. Are there any documents showing how  
10 much it might cost to get it corrected?

11 A. No, I don't have any.

12 Q. And 9B also includes the reasonable  
13 cost of after-care treatment such as would be  
14 required following said revision surgery; is  
15 that correct?

16 A. Yes.

17 Q. What would be -- has anyone told you  
18 what the reasonable cost of after-care  
19 treatment following revision surgery will be?

20 A. No.

21 Q. Do you have any written documentation  
22 showing what the reasonable cost of after-care  
23 treatment following surgery would be?

24 A. No.

25 Q. Do you know of any way of finding out



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2 what the reasonable cost of revision surgery  
3 for correction of scarring will be?

4 A. No.

5 Q. Do you have any way of finding out  
6 what the reasonable cost of after-care  
7 treatment after the surgery would be?

8 A. No.

9 Q. When did you consider revision  
10 surgery for correcting the scar?

11 A. Say that again?

12 Q. When did you first consider getting  
13 surgery to correct the scar?

14 A. Immediately.

15 Q. In January of '04?

16 A. Yes.

17 Q. But you haven't consulted with  
18 anybody since then?

19 A. Not yet, no.

20 Q. I'm sorry, I just wanted to ask you  
21 further, going back to the second page, the  
22 same paragraph that I was reading to you  
23 earlier. Starting, "The basis of the amount  
24 set forth."

25 The last paragraph says, "The basis



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2 for such costs are from information relayed to  
3 the plaintiff."

4 Can you describe to me what  
5 information that is?

6 A. About my scar?

7 Q. Well, the basis for those costs.

8 A. No.

9 Q. So you don't have any information  
10 relating to the basis for the cost of revision  
11 surgery or after-care treatment?

12 A. No.

13 Q. Now in Government's Exhibit 4,  
14 paragraph 9E, you said you are seeking  
15 \$150,000 for past pain and suffering; is that  
16 correct?

17 A. Yes.

18 Q. And in subparagraph 9F, you are  
19 seeking \$335,000 for future pain and  
20 suffering?

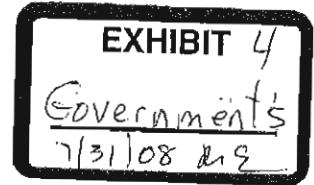
21 A. Yes.

22 Q. What has been your pain and suffering  
23 to date?

24 A. Just physical and mental. The mental  
25 more than anything. Even for my daughter,

# **EXHIBIT E**

POPKIN & POPKIN, LLP.  
By : ELIZABETH J. POPKIN  
209 WEST 97<sup>TH</sup> STREET  
SUITE 7(C)  
NEW YORK, NY., 10025  
Telephone : 212 662-2969  
Facsimile : 212 531-1116  
E-mail : Lizjackpoplaw@aol.com



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
NICOLE EBRON,

Plaintiff

ECF Case

-against-

UNITED STATES OF AMERICA,

08 Civ. 0144 (RMB) (AJP)  
SUPPLEMENTAL  
RESPONSE TO  
INTERROGATORIES

Defendant,  
-----X

Plaintiff repeats and reiterates her Response to Interrogatories as if more fully set forth at length herein.

9. For damages claimed by plaintiff, state the amount of damages, set forth the computation used to arrive at that amount, and identify the documents upon which the computation is based, for each of the following categories of damages;

- |    |                                      |               |
|----|--------------------------------------|---------------|
| a. | Past medical expenses                | \$ 4,200.00   |
| b. | Future medical expenses              | \$ 11,800.00  |
| c. | Past lost earnings or other income   | N/A.          |
| d. | Future lost earnings or other income | N/A.          |
| e. | Past pain and suffering              | \$ 150,000.00 |
| f. | Future pain and suffering            | \$ 335,000.00 |
| g. | Past loss of services                | N/A.          |

h.	Future loss of services	N/A.
i.	Past loss of society	N/A.
j.	Future loss of society	N/A.
k.	Past out-of-pocket expenses	\$ 1,450.00
l.	Future out-of-pocket expenses	\$ 4,400.00
m.	Other damages	N/A.

Your response to this interrogatory should include, but not be limited to, all of the information required to be disclosed pursuant to Rule 26(a)(1)(A)(iii)

The basis of the amount set forth in response 9a., is the plaintiff recollection of amount of the bills for the service rendered during her care and treatment for the injury sustained in this matter at the by Parkchester Family Practice, Jacobi Medical Center Emergency Room and, by the Jacobi Urgent Care Wound Care Specialist. Plaintiff is not currently in posesion of a copy of the bills but has undertaken an effort to obtain the relevant bills and shall supply a copy of such when the bills are received.

The basis of the amount set forth in response 9b., is the reasonable cost of revision(s) surgery for correction of the scarring as well as the reasonable cost of after care treatment such as would be required following said revision(s) surgery. The basis for such costs are from information relayed to the plaintiff and for which the plaintiff is not in posesion of any documents.


The basis of the amounts set forth in responses 9e. and 9f., are the plaintiff's belief as to what fair and adequate compensation would be for her past pain and suffering over the past four plus years and future pain and suffering for the permanent injuries sustained over the remaining years of her life as based on the Life Expectancy Tables

presented by the National Center for Health Statistics, Vital Statistics of the United States, Volume II, Mortality Part A, Section 6, as published in the National Vital Statistics Reports Vol. 47, No. 28 (December 13, 1999). A copy of said Life Expectancy Tables is annexed hereto

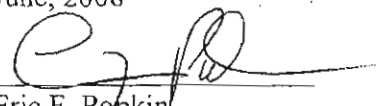
The basis for the amount set forth in 9k., is the plaintiff's recollection of her out of pocket expenses for such items as medications, bandages, gauze, vitamins ointments, creams, which were and continue to be needed for and used in the care of the injury; as well as the costs of transportation to and from doctors, hospitals and clinics for the care of the injury. Plaintiff is not in possession of documents, bills, receipts on which this amount is based.

The basis of the amount as set forth in 9l. is the plaintiff's understanding of what her out of pocket costs will be in the future for the care of the scarring at the injury site both with and without revision surgery and the need for lifetime maintenance and protective care of the scarring at the injury site. The basis for such costs are from information relayed to the plaintiff and for which the plaintiff is not in possession of any documents.

Dated: Bronx, New York  
May 27, 2008

  
Nicole Ebron

Sworn to this <sup>18<sup>th</sup></sup> day of  
June, 2008

  
Eric F. Popkin  
Notary No.: 02P06005410  
Qualified in N.Y., County  
Exp. Date : 4/13/10